

January 23, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Wheatland Cooperative Association

Date of Filing: November 22, 2006

Case No.: TEE-0039

On November 22, 2006, Wheatland Cooperative Association (Wheatland) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Wheatland's request should be granted in part.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² See H.R. Rep. NO. 373, 96th Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."⁵ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁶ Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.⁷ If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.⁸

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;⁹ the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;¹⁰ extreme or unusual circumstances disrupt a firm's activities;¹¹ or, a combination

³ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁵ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁶ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁷ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁸ *Id.*

⁹ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

¹⁰ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

¹¹ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane);

of factors resulting from unavoidable circumstances makes completing the form impracticable.¹²

III. The Application for Exception

Wheatland is a seller of petroleum products headquartered in Wheatland, Wyoming. Wheatland has filed form EIA-782B since January 2002.¹³ Wheatland states that it has undergone a significant changeover in personnel. According to Wheatland, the firm's office manager resigned and the firm currently has only three employees in its office, two of whom are recent hires.¹⁴ Wheatland states that it is training its personnel, but that none of the three employees have ever completed form EIA-782B.¹⁵ Wheatland also states that it has changed computer systems and has experienced significant problems with the new system.¹⁶ According to Wheatland, due to glitches in the new computer system, the firm is currently unable to prepare any financial reports. Wheatland states that it is unable to compile the data for the form manually due to its staffing limitations. Wheatland anticipates that the problems with the new computer system will be resolved within "two to three months."¹⁷ Finally, Wheatland states that it does not believe it can file an accurate form at this time due to its staffing limitations and problems with the computer system.¹⁸ Wheatland requests that it be permanently relieved of the obligation to file form EIA-782B.

IV. Analysis

Upon careful examination of Wheatland's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a significant change in personnel and problems with its new computer system, which it uses to compile financial reports and data used in completing form EIA-782B, and is attempting to train its new staff and correct its computer problems. Considering the public interest in the information obtained from Wheatland's EIA-782B form, however, we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we

Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

¹²*Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

¹³ See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (December 4, 2006).

¹⁴ See Application for Exception; see also Memorandum of Telephone Conversation between Therese Lahaye and Diane DeMoura (January 3, 2007).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Memorandum of Telephone Conversation between Therese Lahaye and Diane DeMoura (January 3, 2007).

¹⁸ See Application for Exception.

have determined that a temporary exception through June 2007 should be granted.¹⁹

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Wheatland Cooperative Association, Case No., TEE-0039, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Wheatland Cooperative Association is relieved of the requirement to file form EIA-782B for the months January 2007 through June 2007.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: January 23, 2007

¹⁹ See Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).